1947.

File No. Misc. B/47
Pt. I

K

Legal **DEPARTMENT**
B **BRANCH**

Subject:—

Misc 235

Miscellaneous Correspondence dealt with in 'B' Branch.

For subsequent papers pl. see Pt. II

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C O N T E N T S.

Legal Department File No. Misc. B/47. Pt. I

Sr. No.	Compilation No.	Subject.	Pages.
		Misc. Correspondence dealt with in "B" Branch.	
1.	GROD No. 8420/32 6-1-47.	State Aid to Small Industries Rules 1935 Amendment in the	1.
2.	GR Recon. D No. 806 dated 9-1-47.	Land Improvement Reorganization of work Report of the Land Improvement Recording. Inquiry Committee Regarding	3-6.
3.	GR Reconst.D No. 911-dated 13-1-47.	Dist. Rural Development Board Reconstitution of -	7-8.
4.	GIHD Letter No. 50/16/46Poll (1) 7-1-47.	Criminal Law. Amendment of the Code of Criminal Procedure 1898 to abolish the system of trial of cases by the Court of Session with aid of assessors.	9-24. (Not copied)
5.	GC Reconst. D. No. 911/3244 24-2-47.	Dist. Rural Development Boards. Reconstitution of-	25. (Not Copied)
6.	GCOD No. 5732/33 23-1-47.	Government Presses Curtailment of work in the	27-29. (Not Copied)

ETC. 15/5.

BS.

State Aid to small Industries Rules, 1935

Amendments in the .

Government of Bombay,
General Department,
Resolution No. 5490/33,
Bombay Castle, 6th January, 1947.

RESOLUTION OF GOVERNMENT.

Government is pleased to direct that the following amendments should be carried out in rule 5 of the State-Aid to Small Industries Rules, 1935, sanctioned in Government Resolution, General Department No. 4974 dated 22nd June 1936 and subsequently amended from time to time viz.:-

(1) Substitute the word and figure "Rs. 25,000/-" for the word and figure "Rs. 10,000/-" occurring in line 3 of this rule.

(2) Add the words "subject to the provision made in the budget on that account" after the word and figure "Rs. 25,000/-" occurring in line 4 of this rule.

By order of the Governor of Bombay,

D.S.Joshi.

Deputy Secretary to Government.

To

The Commissioners of Divisions,
The Director of Industries,
The Director of Fisheries,
All Collectors of the Districts,
All Superintending Engineers of Circles,
All Executive Engineers of Divisions,
The Remembrancer of Legal Affairs,
The Solicitor to Government,
The Accountant General, Bombay,
The Director of Information,
The Superintendent, Government Printing and Stationary,
The Revenue Department,
The Home Department,
The Finance Department,
The Public Works Department,

BVY. 1585.

Land Improvement.
Reorganization of work---
Report of the Land Improvement
Inquiry Committee.
regarding.

Government of Bombay,
Reconstruction Department,
Resolution No. 806,
Bombay Castle, 9th January 1947.

Letter from the Chairman and Members of the Land Improvement Inquiry Committee dated 4th November 1946 submitting the following suggestions concerning the reorganization of the Land Improvement Work being carried on by the Land Improvement Section, for the immediate consideration of Government.

x x

(I) No fresh bunding work should be undertaken anywhere; where a catchment has already been taken in hand, the work should be rounded off at a safe stage.

(II) At present little attention is paid to the special requirements of individual catchments. The slope and soil characteristics of the land very widely, as also the degree of erosion which it has already suffered. There has in our opinion been too great a tendency to apply a stereotyped and oversimplified system of contour bunding to all areas alike. We saw little evidence of conscious, deliberate planning, based on careful observation and survey, on the spot. The works seems to have been undertaken, ad hoc, to meet special situations (e.g. famine and scarcity) and often at the wrong end of the catchment. All the areas already covered should now be re-examined in the light of the special needs of each catchment, which will be determined by the nature of the soil, the amount and rate of precipitation, and the slope characteristic of each. The present haphazard procedure should come to an end and the overhauling of the existing work should be thorough scientific and efficient, even if it involves the scrapping of a part of the work already done, at some cost.

(III) In the light of these considerations we suggest that the Land Improvement Department as it exists to-day should be suitably reorganized without delay. We understand that the present Director of Land Improvement is shortly proceeding on

leave preparatory to petirement,. Though it is obviously impossible for us to indicate, at this stage, the final form which the Department or "Soil Conservation Service" as we would prefer to call it should take, we see no need to fill the Director's post during the leave vacancy. We also consider that the two posts of Land Improvement Officers. North and South may well be amalgamated and one officer should become the pro tempore Head of the Soil Conservation Service, in whom ultimate responsibility for the proper planning, design and execution of the individual improvement schemes should vest. Broadly speaking, this officer should attend to the duties, at present performed by the Director of Land Improvement, in addition to his own, pending the submission of our final report.

(IV) Since we are emphasizing consolidation rather than rapid expansion; some proportion of the existing staff will be found surplus to the needs. The personnel of the Department gives evidence of the haste with which it was rapidly assembled from different, discordant sources,. Considering the nature of the quick, ad hoc, "training" they have received, it is no matter of surprise that there are, at present, several weak and inefficient units in this assemblage. These weak superfluous units may be quickly got rid of. At the same time, we would draw attention to the extreme difficulty of securing any kind of trained and competent personnel, at present, and would caution against the hasty disintegration of personnel who have shown their worth and who can be usefully employed in the cadre of the "Soil Conservation Service" that may be set up, on a permanent basis, hereafter.

(V) Dry farming technique employsx buding but the primary purpose of such bunding is the conservation of moisture in areas of low rainfall. It is moreover intimately concerned with special methods of tillage such as contour ploughing and sowing in wide rows, and with special agricultural practices during the growth of the crop, xxh

such as interculturing and mulching. The Dry Farming Branch has therefore to conduct continuous research into the methods calculated to give the opimum yields under different conditions of soil and rainfall, and to devise propaganda to popularise these methods among the local peasantry. The work of the Branc is thus only remotely connected with bunding and we see recommend that it should be retransferred to the Agricultural Department proper to which it originally belonged.

x x

Resolution:- Government is pleased to approve generally the interim suggestions made by the Land Improvement Inquiry Committee and to issue the following orders.

2. Suggestions 1 and 2. The Deputy Director of Agriculture (Land Improvement) should be requested to take immediate action as recommended by the Committee.

3. Suggestion 3:- The orders about the abolition of the posts of the Director of Land Improvement and the Lan Improvement Officers North, and South, and the creation of a post of Deputy Director of Agriculture (Land Improvement), have been issued separately.

4. Suggestion 4:- The question of reduction in the number of the other gazetted posts is under the consideratio of Government separately. As regards reduction in the non-gazetted staff the Deputy Director of Agriculture (La Improvement) has been asked to submit proposals very urgently through the Agricultural Commissioner. While considering the reduction in the staff are should be taken to see that trained and competent personnel are retained as far as possible.

5. Suggestion 5:- The orders about the transfer of the Dry Farming Section, together with the staff, records and deadstock to the Agricultural Department are being issued separately.

By order of the Governor of Bombay

W.J. Jenkins,
Additional Secretary to Government.

To

The Commissioners of Divisions,

All Collectors,

The Agricultural Commissioner,

The Director of Agriculture,

The Chief Conservator of Forests,

The Settlement Commissioner, and Director of Land Records,

The Deputy Director of Agriculture (Land Improvment)

The Accountant General,

All Departments of the Secretariat (except the separate Department and Civil Supplies Department).

EVY. 16/5.

No. 50/15/46-Pell(1)
GOVERNMENT OF INDIA,
Home Department.

From

A.E. Porter, Esquire, C.S.I., C.I.E., I.C.S.,
Secretary to the Government of India,

To

The Secretary to the Government of Bombay,
Home Department.

New Delhi, 3rd the 7th January 1947.

Subject:- Criminal Law-Amendment of the Code of Criminal Procedure, 1898, to abolish the system of trial of cases by the Court of Session with the aid of assessors.

Sir,

I am directed to invite your attention to the correspondence ending with the letter from the Provincial Government your letter No. 5991/4B, dated the 8th September 1942 in connection with Mr. Kazmi's Bill on the subject mentioned above and to say that as the Provincial Government/ yeur are presumably aware the motion of Mr. Kazmi to refer his Bill to a select committee was negatived without division. The relevant proceedings of the Legislative Assembly are at pages 752-764 of Volume I and pages 1483-1491 of Volume II of the Legislative Assembly debates for 1943. The Governmen opposed the motion for the reasons given in the speech of th then Law Member, Sir Sultan Ahmed. The opinion of the Government of India in the matter was that there was no urgency in the matter and that the time was inopportune for the abolition of a time honoured system the continuance of which would do no positive harm.

2. The Government of the United Provinces recently proposed to introduce a Bill in the Provincial Legislative to abolish the system of trial with the aid of assessors. A copy of the letter from the Secretary to the Government of the United Provinces together with a copy of the Bill drafted by the Provincial Government is enclosed. As the proposal involves an amendment of a provision of long standing the Government of Indiam are of the opinion that it

the matter should be considered on an All- India basis and h have accordingly informed the Government of the United Provinces that they would examine the question of promulgating central Legislation in consultation with Provincial Government I am to request that Provincial Goverment/ you may favour th the Government of India will their your present views on the question of abolition of thials with the aid of assessors and comments on the United Provinces Government. Bill after consulting such authorities and non- official bodies as the Provincial Government you may thing it necessary to consult. In the event of the abolition of trials with the aid of assessors being favoured, an indication may be given of the alternative system advocated. The Government of India would be glad if the reply to this reference can be sent to reach them not later than the 1st March 1947.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/-

Secretary to the Government of India.

No. 50/15/46-Poll(1), New Delhi, 3, the 7th January 1947.

Copy with copy of enclosure forwarded to the Government of the United Provinces for information.

2. Copy with copy of enclosure forwarded to the Legislative Department/External Affairs Deparment/Political Department/ Secretary to the Governor General (Public) for information.

By order,

G.V.Bedekar.

Deputy Secretary to the Government of India.

EVY. 16/6.

Copy of letter No. 3098/JS dated 24th October 1946, from the Secretary to His Excellency the Governor, United Provinces, to the Secretary to the Governor-General (Public) New Delhi.

Subject:- Amendment of the Code of Criminal Procedure, 1898, (v)of 1898) to abolish the system of trial of cases by the court of session with the aid of assessors.

I am directed to submit a copy of the Code of Criminal procedure (U.P. Amendment) Bill, 1946, for the previous sanction of H.E. the Governor General of India Act, 1935.

2. The object of the proposed bill is to abolish the system of trial with the aid of assessors in a sessions court in accordance with the long-standing public demand in this respect.

3. It will be relevant to give here a brief history of the system, a detailed note on which was given to the Provincial Government by the Acting Chief Justice of Allahabad High Court in 1937. With the Muhammadan conquest Muhammadan criminal law was introduced for all criminal trials. The aym-i-Akbari states that justice was administered by a court composed of an officer named Mir-i-Adl (Lord Justice) and a Quzi. The Qazi conducted the trial and stated the law and the Mir-i-Adl passed judgment. When the British established their administration the Muhammadan Criminal law was retained and so also the Muhammadan courts. The system apparently did not work satisfactorily and there were long delays in the disposal of cases which often led to failure of justice. The Governor-General in Council accordingly passed certain Regulations on December 3, 1790, establishing courts of Circuit under the superintendence of English Judges assisted by natives versed in the Muhammadan law, for trying in the first instance persons charged with crimes or misdemeanours, and enabling the Governor General and members of the Supreme Council to sit in the Nizam Adawlut. The Hindus were very much dis-satisfied with the prevedur particularly when the Muhammadan law was being applied to them.

The result was that by Regulation VI of 1832 system of assessors for trials of non-Muhammadans was introduced. The preamble to the Regulation states "It is considered desirable to enable the European functionaries who preside in the court for administration of civil or criminal justice to avail themselves of the assistance of respectable natives in the decision of suits or the conduct of trials which may come before them. It is also offensive to the feelings of many persons who are subject to the Government of this Presidency, and do not profess the Muhammadan faith, to be liable to trial and punishment under the provisions of the Muhammadan Criminal Code". Section III of the Regulation gave power to the European presiding officer in civil suits to "avail himself of the assistance or respectable natives in either of the three following

> "by referring the suit to a panchayat; or by constituting two or more such persons assessors or members the Court, with a view to the advantages derivable from their observations particularly in the examination of witnesses. The opinion of each assessor shall be given separately and discussed" or by employing them "more nearly as a jury".

It was provided in the Regulation that in all cases "The decision is vested exclusively in the authority presiding in the Courts". Section IV of the Regulation made the same rules applicable to "Criminal courts of a Commissioner of Circuit or Judge of sessions" and provided that" in all trials in which recourse may be had to the provisions of this Regulation the fatwa of a Muhammadan law officer is declared unnecessary and may be dispensed with at the opti of the court".

4. The above indicates how under the British rule the system of trial with the aid of assessors came into existence. By Act XXV of 1861 the first criminal Procedure Code took the place of all criminal procedure and the fatwa disappeared

and if a sessions trial was not by a jury it was to be with the aid of two or more assessors. This procedure has continued to date with only slight variation.

5. The system has been tried for well high a century. The system of associating assessors with the judge might have had some value in the early days of the British Rule when the Judge who was not presumably conversant with the customs, usages and habits of the people of this country, needed the benefit of the advice of assessors as to the value of evidence produced in the case, but now the circumstances are entirely changed as a majority of the sessions judges are Indians who know the customs and manners of the people and even the European judge have a much better knowledge now of the country and its peoples and the judges therefore can form a reasonably accurate estimate of the value of the evidence and the help of assessors is therefore quite unnecessary.

6. The scheme of the Code shows that in the view of the legislature itself it is less advantageous to the accused to be tried with the aid of assessors than by jury. In cases tried by jury the jury ~~xxx~~ is the real tribunal. They are aided by the judge and in certain matters directed by the judge. They are invested with special status and special powers and the ultimate responsibility for all decisions within their sphere is meant to be theirs and theirs alone. The assessors on the other hand do not form a body but each acts and expresses his opinion individually. They are only to assist the judge and take no part in the judgment. The judge is the sole judge of law and fact and the responsibility of the decision rests with him. As the assessors know their position fully well and realise that the jude is not bound by their opinion, they are liable to become indifferent.

of assessors is not in any way dependent upon the decision on the question of trial by jury.

9. For the reasons given above the Provincial Government is of the opinion that the system of trial with the aid of assessors serves no useful purpose, involves a waste of public funds and also of time, and sometimes causes great delay in sessions trials and should therefore be abolished.

10. In the proposed Bill the repeal of section 284(A) Cr. P.C. and amendment of section 446 Cr. P.C. have also been proposed. This will affect the procedure for criminal proceedings in which European British subjects are concerned. Previous sanction of the Governor-General is therefore necessary under sub-section 2(d) of section 108 of Government of India Act, 1935.

11. It has occurred to this Government that probably other Provinces may also share its opinion about this system of tria with the aid of assessors. Our draft Bill has been so drawn up that any Province can abolish the system either partially or wholly at its convenience. The amending Bill can therefore be adopted by the Government of India as its own measure and i this is done, the need for any Provincial amending Act will not arise. Should the Government of India not feel inclined to adopt this as their measure, it is intended to introduce the Bill in the Provincial legislature as early as possible in the next session of the U.P. Legislative Assembly following the receipt of the previous sanction under sub-section 2(d) of section 108 of Government of India ACT FROM His Excellency the Governor-General.

12. I am accordingly to request that should the Government of India not adopt this Bill as their measure, previous sanction of His Excellency the Governor-General under sub-section 2(d) of section 108 of Government of India Act, 1935 may please be obtained to the interduction of the Bill in the Provincial Legislature.

The code of criminal procedure (United Provinces Amendment).

Bill, 1946.

A

Bill further to amend the Code of Criminal Procedure, 1898.

---

of 1898

WHEREAS it is expedient further to amend the code of Criminal Procedure, 1898 to abolish in the United Provinces trial of Criminal cases with the aid of assessors; It is hereby enacted as follows:-

Short title

1. (1) This act may be called the Code of Criminal Procedure (United Provinces Amendment) Act, 1946.

(2) It extends to the whole of the United Provinces.

(3) It shall come into force at once.

Amendment of section 268 of the Code of Criminal Procedure, 1898.

2. At the end of section 268 of the Code of Criminal Procedure 1898 (hereinafter called the said Act) insert :

"Provided that the Provincial Government may by order in the official Gazette direct that the trial of all offences or of any particular class of offences before any court of session shall be before the judge sitting above and on the making of such order the provisions of the said Act as mentioned in the schedule shall have effect subject to the modifications directed in the schedule."

.....

EVY. 16/5.

SCHEDULE.

(See Section 2).

Provisions.	MODIFICATIONS.
Sections 90, 294 324, 330, 332	1. In sections 90, 294, sub-section (2) of section 324, sub-section (1) of section 330 and sub-sections (2) and (4) of section 332 the words "or assessor" shall be deleted.
Sections 286, 293, 295 319, 320, 321, 327, 375 428, 537	2. In sub-section (1) of section 286. sections 293, 295, 319 and 320 sub-section (1) of section 321, sections 327, sub-section (2) of section 375, sub-section (3) of section 428, clause (c) of section 537 the words "or assessors" wherever they occur shall be deleted.
Section 331, headi K of Chapter XXIII or part VI	3. In section 331 and heading K or chapter XXII of part VI the words "and assessors" wherever they occur shall be delted.
Sections 324 and 332	4. In sub-section (1) of section 324 and sub section (1) of section 332 the words "or as an assessor" shall be deleted.
Section 227	5. In sub-section (1) of section 227 the word "or the opinions of the assessors are expressed" shall be deleted.
Section 269.	6. In sub-section (3) of section 269 the words "with the aid of the jury as assessors" shall be delted.
Section 272.	7. For Section 272, the following shall be substituted;

"If the accused refuses to or does not plead or if he claims to be tried the Court shall proceed to try the case.

Provided that if the case is triable by jury the Court shall before commencing trial choose jurers as hereinafter directed. Provided that, subject to the right of objection hereinafter

'Mentioned, the same jury may try as many accused persons sucessively as the court thinks fit".

Heading "D-Choosing Assessers" after Section 283

8. The heading and words "D-Choosing Assessers' occurring after section in Chapter XXIII, shall be deleted.

Section 284, 284A & 285

9. Sections 284, 284A and 285 are hereby repealed.

Sections 285A

10. In section 285A the words and figures "or section 284A shall be deleted.

Section 289

11. In sub-sections (2) and (3) of section 289 the words Him a case tried with the aid of assessors shall be delted.

Heading H of Chapter XXIII

12. In heading H of chapter XXIII of part VI of the words "with assessors" the words "ether-wise than by jury" shall be substituted.

Section 309

13. In Section 309 the following amendmentsx shall be made:-

(a) Sub-sections (1) and (2) shall be deleted and a new sub-section (1) shall be inserted as follows:- "When the case for the defence and the prosecuter's reply, if any are concluded, the court shall deliver judgment".

(b) Sub-section (3) shall be renumbered as sub-section (2).

Section 310

14. In section 310, the following amendments shall be made:-

(a) In the first paragraph for the words "with the aid of assessors", the words "by a Judge sitting alone" shall be substituted.

(b) In sub-clause (ii) of clause (a) the words "or the opinions of the assessors have been recorded" shall be delted.

(c) In clause (b) for the words "with the aid of assessors "the words "by a judge sitting alone" shall be substituted.

Section 326. 15. In sub-section (1) of section 326, the words "And trials with the aid of assessors" and "or assessors" shall be deleted.

Section 328 and 329 16. In sections 328 and 329 the words "or assessors' and "or assessor, as the case may be be "wherever they occur shall be deleted.

Section 339A 17. In sub-section (2) of section 339A for the words "Court with the aid of assessors" the words "Judge sitting along" shall be substituted.

Section 446 18. The previso the to sub-section (2) of section 446 shall be deleted.

Section 376 19. In section 376 the words "whether tried with the aid of assessors or by jury" shall be deleted.

Section 465 20. In sub-section (1) of section 465 the words "with the aid of assessors" shall be deleted.

Section 536 21. In section 536 for the words "with the aid of assessors" wherever they occur the words by a "judge sitting along" shall be substituted.

ection 539 22. In the previso the section 539B, the following amendments shall be made:-

(a) the words "or with the aid of assessors" shall be deleted, and (b) the words "or assessors are "shall be deleted.

Form XXXII of Schedule V. 23. In form XXXII of schedule V the words "and assessors" wherever they occur shall be deleted.

Form XXXIII of Schedule V. 24. In form XXXIII of schedule V the following amendments shall be made:

(a) In the heading the words "assessor or" shall be deleted.

(b) For the words and brackets "an assessor (or a juror)" the words "a Juror" shall be substituted.

Statement of objects and Reasons.

The system of trial with the aid of assessors in the Court of session was introduced in 1832 mainly with the idea of enabling European Judicial officers who were not familiar with the customs, usages and habits of the people of this country to get the benefit of the advice of the assessors as to the value of evidence produced in the case. More than 100 years have passes since then and times have changed radically. In the majority of the courts sessions judges are Indians and even the European judges now are more familiar with the customs and habits of the people of this country. The assessors are there only to assist the jude and take no part in the judgment. The judge is the sole judge of law and fact and the responsibility of the decision rests with him.

In this state of the law the assessor has become indifferent and his advice is of no practical help. The question of abolition of the system has been raised many a time and the Provincial Government in 1947 appointed a committee called the Jurors and Assessors Committee under the chairmanship of Mr. Niamatullah, retired Judge of the Allahabad High Court, to report on the question among others whether in the districts where jury system does not prevail, the system of trial with the aid of assessors should be retained. The Committee was emphatically of the opinion that the system had outlived its utility and the continuance thereof was a waste of public funds. Judges, magistrates and lawyers all have condemned the system. There is an insistent public demand that it should be abolished. Provision has been made accordingly in the Bill, giving power to the Provincial Government to notify in the official Gazette that the trial in any court of session shall be before the judge sitting alone.

Letter.

No. 1563

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 15th February 1947.

To

The Secretary to the Government of Bombay,
Home Department.

Subject:- Criminal Law.
Amendment of the Code of Criminal Procedure 1898 to abolish the system of trial of cases by the Court of Session with aid of assessors.

With reference to your letter No. 5991/4-B, dated the 18th January 1947, on the above subject, I have the honour to state as follows:-

The system of trials with the aid of assessors has outlived the utility which it might have had once. More often than not the assessors are an utterly useless set of people, with magre qualifications and little sense of responsibility. They have no part to play in arriving at a judgment in the case. They know perfectly well that the Judge is not bound by their opinion and are therefore scarcely attentive to the evidence in the case. It is time that trials with the aid of assessors are abolished.

In the event of the abolition of trials with the aid of assessors there would be two alternatives for Government to adopt, (1) to extend the jury system to cases which are now tried with the help of assessors; or (2) to allow such cases to be tried by the Judge alone. The question whether a particular offence should be tried with a jury or by the Judge sittting along. ~~xxxxxxxxxx~~ in district places should be left to the discretion of the Provincial Government, For instance, a jury trial may not be suitable in backward areas where it may be difficult to constitute a jury. In such places the trial by the Judge alone will be have to be adopted. Although therefore the system of jury trial is to be commended as a whole

it may be left to the discretion of the Provincial Government, to decide in what places it should be extended.

Sd/- D.V.Vyas.
Remembrancer of Legal Affairs.

EVY. 17/5.